

**ATTACHMENT J
SPECIAL PROVISIONS**

MASSACHUSETTS DEPARTMENT OF TRANSPORTATION

OFFICE OF TRANSPORTATION PLANNING

Contract # **XXXXXX**

Contract period: NTP through **[end date]**

These SPECIAL PROVISIONS shall be made part of this contract with the expressed understanding that in the event of conflict, the SPECIAL PROVISIONS shall prevail over the STANDARD PROVISIONS, Office of Transportation Planning version. In the event of conflicts between any parts of this contract and the COMMONWEALTH OF MASSACHUSETTS STANDARD CONTRACT (STANDARD CONTRACT), the provisions contained in the STANDARD CONTRACT shall prevail.

During the performance of this contract, the CONSULTANT shall comply with the terms and conditions contained in the STANDARD CONTRACT and ARTICLES I and II of the STANDARD PROVISIONS included in ATTACHMENT I of this contract, except as said STANDARD CONTRACT and STANDARD PROVISIONS are expressly amended or supplemented as follows below.

The numbering of amendments in these SPECIAL PROVISIONS corresponds to that of the preceding STANDARD PROVISIONS. Skipping a number in the SPECIAL PROVISIONS indicates only that there is no change to the corresponding number in the STANDARD PROVISIONS.

ARTICLE I - GENERAL PROVISIONS

2. TIME SCHEDULE:

Amend to include the following:

The Consultant, upon written notice to proceed with an assignment by the Director, shall begin performance of the services promptly and shall complete the services without delay. All work to be performed shall conform to a time schedule. The specific time schedule for each assignment shall be proposed by the Consultant and shall be reviewed by the Director at the time of the assignment. The time period required to complete all assignments shall be scheduled to enable the Consultant to complete them prior to the termination date, unless this date has been extended by both parties. Allotment of time for each task shall not be changed without the prior approval of the Director.

3. TERMINATION

Add the following:

This contract shall commence on the date indicated in the written Notice to Proceed from the Massachusetts Department of Transportation/Office of Transportation Planning and shall remain in effect until **end date** subject to satisfactory completion of the work tasks in accordance with the Project Schedule.

12. REPORTS OF MEETINGS

Add the following:

Meeting reports shall be submitted to the Project Manager no later than one calendar week from the date of each scheduled meeting. These reports shall include a list of attendees at the meeting, a brief narrative concerning the meeting's agenda, and a description of any decisions, resolutions or anticipated follow-up to the discussion.

21. NOTICE

Amend to read as follows:

Unless otherwise specified, any notice here under shall be in writing and deemed delivered when given in person or deposited in the U.S. mail, postage prepaid and addressed as follows:

To Department: David Mohler, Executive Director
Office of Transportation Planning
Massachusetts Department of Transportation
10 Park Plaza, Room 4150
Boston, MA 02116

To Consultant: **XXXXXXXXXX**

22. INSURANCE

Amend the 3rd paragraph by deleting the sentence “This insurance shall be obtained by the Consultant...errors in design cannot further affect said construction.” in its entirety and replace with the following: “This insurance shall be obtained by the consultant and shall remain in force for the duration of the contract.”

Add the following: “The consultant shall carry a Professional Services Liability Policy for errors and omissions, as described in Article I, Section 22 (as amended), for the minimum amount of \$1,000,000.”

25. NEGOTIATIONS SUBSEQUENT TO CONTRACT EXECUTION

27. COPYRIGHT

Add the following:

Furthermore, any materials to be published and/or copyrighted by the Consultant as a result of work for this contract shall receive prior written approval of the Executive Director.

**ARTICLE J
SPECIAL PROVISIONS**

ARTICLE II - COMPENSATION OF CONSULTANT

1. GENERAL FEE

Add the following:

The Massachusetts Department of Transportation/Office of Transportation Planning hereby agrees to pay and the Consultant agrees to accept as full compensation for all services rendered to the satisfaction of the Department a maximum fee of **\$XX**. For all services to be performed under this contract, the Consultant shall be compensated in accordance with payment METHOD 2 - COSTS PLUS A NET FEE.

Subsection (a)

Amend to include the following:

For billing purposes, the Consultant shall charge its costs to applicable activity code numbers and cost codes on the Massachusetts Department of Transportation/Office of Transportation Planning's standard invoice. The codes shall be furnished to the Consultant by the Massachusetts Department of Transportation/Office of Transportation Planning at the appropriate time. (See *Subsection (d)* below).

All costs and charges of the Consultant under this contract must be billed to and associated with a task as listed in Attachment B. The maximum labor cost that shall be billed to each task is equal to the amount referenced for that task in Attachment B. Labor costs in excess of these limits shall be considered unallocated costs. Any deviation from the task structure (financial or otherwise) of the budget in Attachment B must have prior written approval of the Director.

Time sheets shall be submitted for each employee engaged in the performance of this contract, except those included in overhead costs. The time sheets shall be signed by the individual employee and certified as correct by an authorized individual.

Subsection (b)

Amend to include the following:

It is expressly understood that the maximum payment amounts established in Attachment B for overhead costs have been calculated on the basis of an overhead rate of **X% for [consultant firm name]** as provided under the Standard Provisions. The indirect cost amount to be established for each assignment shall be determined by multiplying the direct salaries for the assignment by the above indirect cost rates.

The Massachusetts Department of Transportation/Office of Transportation Planning reserves the right to defer any partial payment until such time as disputes are resolved concerning products or the percent of work completed for each task, as required in Attachment A.

Subsection (c)

Amend to include the following:

A net fee not to exceed 10% of the sum of the consultant's actual direct salary costs plus overhead charges shall be paid to the Consultant to cover Consultant's profit, miscellaneous expenses, and other factors that may be considered under the applicable regulations and that are not paid for otherwise.

Subsection (d)

Amend to include the following:

Following receipt of the Department's notice to proceed with an assignment, the Consultant shall submit a breakdown of anticipated direct expenses to be incurred for that assignment. The printing of sets of design plans prepared by the Consultant for review by the Department and for bidding of jobs by the Department shall be reimbursable provided they are included in an approved breakdown of direct expenses. Copying of data and sketch plans used internally by the Consultant shall not be reimbursable. Estimated expenses shall be reviewed by the Director and may be incurred after his written approval. Direct expenses in excess of the total of approved direct costs shall be considered to be unallocated costs and shall not be charged to indirect costs.

Direct costs incurred shall be itemized on a summary sheet attached to a monthly invoice, and the Massachusetts Department of Transportation/Office of Transportation Planning shall reserve the right to question and/or disapprove any item which is unreasonable or which has not received prior written approval.

Direct costs as attached to this contract shall be eligible for reimbursement, provided such costs are not included in overhead expenses. Any such individual costs in excess of \$1,000 shall require prior written approval of the Executive Director.

Travel expenses for meetings shall not exceed the limitation of the current IRS approved mileage rate for private mileage; necessary tolls and reasonable parking fees will be considered reimbursable in addition to said mileage limits. Reimbursable meal costs are limited to maximums of \$5.00 for breakfast, \$10.00 for lunch, and \$20.00 for dinner. The costs of meals during the course of a normal work day are not reimbursable. Lodging costs not to exceed \$125.00 per night may be reimbursed under special circumstances, provided advance approval is received from the Executive Director. Travel expense limitations may be increased upon written notification to the Consultant by the Massachusetts Department of Transportation/Office of Transportation Planning.

Under the agreement that the Consultant is required to maintain an office within the confines of the Commonwealth of Massachusetts, the Massachusetts Department of Transportation/Office of Transportation Planning will not be billed for travel time for professional employees of the Consultant.

5. PAYMENTS

Add the following:

Partial payment against the General Fee shall be in accordance with PAYMENT METHOD 2 - COSTS PLUS A NET FEE.

All invoices shall be submitted no later than thirty (30) days following the month in which the services were performed and shall include a monthly summary sheet, in a format prescribed by the Massachusetts Department of Transportation/Office of Transportation Planning, showing the number of hours per day and total hours for each individual.

The Consultant shall furnish progress reports for each monthly pay period of its work. The progress report shall accompany the invoice for that period. All work products are subject to the approval of the Executive Director before payment is made. The progress report shall be prepared with a title page indicating the contractor name, the contract number, the report time period, and shall include the following:

- a) Brief narrative describing the work accomplished by task.
- b) Key personnel attendance at meeting(s) held for each week.
- c) Objectives/planned activities for the next month.
- d) Percent of work completed by task.
- e) Some measure of actual resources (hours, funds, etc.) charged to the contract over the past month.
- f) Comparison of actual cumulative resources expended compared to the contract budget.

6. RETAINAGE

Amend to include the following:

A retainage rate of 0% shall apply to this contract. Final payment will be made within 60 days, unless Consultant is notified that the final products are not acceptable.

7. RECORDKEEPING, AUDIT, AND INSPECTION OF RECORDS

All costs and expenses as described in the foregoing paragraphs are to be determined by actual records kept by the Contractor in accordance with the provisions of this Contract and are subject to final audit by the Department (or its designee) and the FHWA. The total partial payments made hereunder shall be adjusted to conform to determinations made in such audit(s). Payments as made to the Contractor shall be subject to adjustments on the basis of final audit by the Department. At their discretion, the Department and the FHWA may undertake interim audits and make retroactive Interim payment adjustments as a result of such audits at any time during the term of this Contract.

The Contractor is obligated to maintain in an acceptable form books, records, and other compilations of data pertaining to the performance of the provisions and requirements of this Contract to the extent and in such detail as shall properly substantiate claims for payment under this Contract, including complete employee time and payroll records, as well as documents, papers, and other evidence pertaining to billings to the Department under this Contract; and shall also maintain records supporting the original cost proposal on this Contract. The Contractor shall make such materials available at its office at reasonable times during the term of this Contract and thereafter for inspection by the various agencies and entities identified in this Section; and

copies of such materials shall be furnished upon request of the Department or its designee or the FHWA.

The Contractor shall comply with any programmatic or fiscal reporting requirements identified in this Contract, including format, contents, detail and submission requirements. The Contractor's failure to timely submit required reports may be considered a material breach of this Contract and may subject the Contractor to delayed or reduced payments without penalty to the Department.

All such records and reports, noted above, shall be kept for a minimum period of seven (7) years or until the resolution of any litigation, claim, negotiation, audit or other action involving the records which arise at any time during the retention period. All document retention periods shall begin on the first day after final payment under this Contract. If any litigation, claim negotiation, audit or other action involving the records has been started before the expiration of the applicable retention period, all records shall be retained until completion of the action and resolution of all issues resulting there from, or until the end of the applicable retention period whichever is later.

Pursuant to Executive Order No, 195, or as amended, the Department, the Governor of the Commonwealth of Massachusetts or his/her designee, the Secretary of Administration and Finance, the State Auditor, or their duly authorized designees, shall have access, at reasonable times and upon reasonable notice to examine the books, records, reports, and other compilation of data of the Contractor noted above which pertain to the performance of the provisions and requirements of this Contract. Such access shall include on-site audits, review, and photocopying of such records, reports or other data, at a reasonable expense.